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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FINJAN LLC,

Plaintiff,

v.

PALO ALTO NETWORKS, INC.,

Defendant.

Case No. 3:14-CV-04908-JD

**PALO ALTO NETWORKS'
RENEWED MOTION
TO STRIKE FINJAN'S
INFRINGEMENT
CONTENTIONS FOR THE
'408 AND '731 PATENTS AND
TO DISMISS THESE PATENT
CLAIMS WITH PREJUDICE**

Date: October 17, 2024
Time: 1:30 p.m.
Courtroom: 3, 17th Floor
Judge: Honorable Richard Seeborg

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 17, 2024, at 1:30 pm, or as soon thereafter as counsel may be heard in the United States District Court for the Northern District of California, San Francisco Division, in Courtroom 3, 17th Floor before the Honorable Richard Seeborg, Defendant Palo Alto Networks, Inc. (“PAN”) will and hereby does submit its renewed motion seeking an order striking Plaintiff Finjan LLC’s (“Finjan”) January 28, 2022 amended contentions for U.S. Patents No. 8,225,408 (“’408 Patent”) and No. 7,418,731 (“’731 Patent”) (“Second Amended Contentions”) and dismissing Finjan’s infringement claims for these patents with prejudice.

Pursuant to Patent Local Rules 3-1 and 3-6, Judge Hamilton’s July 20, 2021 Order (Dkt. No. 146), Judge Donato’s January 13, 2022 Order (Dkt. No. 177), and Judge Donato’s March 27, 2023 Order (Dkt. No. 232), PAN renews its motion to strike Finjan’s Second Amended Contentions and seeks an order from the Court striking those contentions and dismissing Finjan’s claims for infringement of the ’408 and ’731 Patents with prejudice.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION AND STATEMENT OF ISSUES TO BE DECIDED

Finjan has filed numerous lawsuits in this District alleging infringement of its patents, including the ’408 and ’731 Patents. Courts have repeatedly struck or required Finjan to amend its infringement contentions because Finjan failed to comply with the Patent Local Rule requiring that Finjan “identify[] specifically *where and how* each limitation of each asserted claim is found within each” accused product. Patent L. R. 3-1(c) (emphasis added). Finjan’s contentions against PAN suffer the same deficiency.

Finjan’s Second Amended Contentions for the ’408 and ’731 Patents do not comply with Patent Local Rule 3-1(c)—even after three rounds of contentions, three PAN motions, and three court orders. Most recently, Judge Donato terminated PAN’s motion to strike Finjan’s contentions without prejudice and invited PAN to renew its motion, as necessary, following claim construction. Claim construction narrowed the dispute because Finjan has now stipulated to non-

1 infringement of the '154 Patent, but fundamental deficiencies remain with respect to the '408 and
 2 '731 Patents. Those deficiencies were not affected by the Court's claim construction ruling; they
 3 have infected Finjan's contentions from the outset and Finjan has refused to address them.
 4 Instead, Finjan continues to obscure aspects of its infringement theories in voluminous charts that
 5 merely parrot claim language. But Finjan does not explain *where* in the PAN products certain
 6 features are, and its contentions leave PAN to speculate as to *how* those features meet the claim
 7 language.

8 Finjan made a strategic choice to be vague, to try to leave itself room to shift theories at
 9 the eleventh hour, and to ignore both the Patent Local Rules and prior court orders along the way.
 10 At this point, the Court has given Finjan ample warning and plenty of chances.¹ Finjan's flagrant
 11 violations of the Patent Local Rules, Judge Hamilton's order striking Finjan's initial contentions
 12 in part (Dkt. No. 146), and Judge Donato's order instructing Finjan to serve compliant amended
 13 contentions (Dkt. No. 177) warrant striking Finjan's Second Amended Contentions for the '408
 14 and '731 Patents and dismissing its infringement claims for these patents with prejudice.

15 **STATEMENT OF THE RELEVANT FACTS**

16 Over the course of this lawsuit, Finjan has served multiple rounds of infringement
 17 contentions, but instead of taking the opportunity to remedy specific identified deficiencies,
 18 Finjan has instead tried to dress them up in additional verbiage and citations without providing
 19 any further clarity as to where and how certain limitations are met.

20 *Round One:* Finjan served its initial infringement contentions on April 1, 2021. On
 21 May 12, 2021, PAN alerted Finjan that its contentions failed to comply with Patent Local Rule
 22 3-1(c). (Ex. 1.)² Finjan refused to address any of the deficiencies. (Ex. 2.) On June 15, 2021,
 23 PAN moved to strike Finjan's contentions. (Dkt. No. 128.) PAN identified, *inter alia*, Finjan's

24
 25 ¹ Finjan already attempted to shift its theories during expert discovery, leading Judge
 26 Donato to strike a previously undisclosed theory based on the "CTD engine" from Finjan's
 technical expert reports. (*See* Dkt. No. 262.) PAN's motion to strike does not in any way depend
 on the "CTD Engine" or the Court's exclusion of expert testimony concerning it.

27 ² References to "Ex. __" are to exhibits to the Declaration of Michael DeStefano, dated
 28 September 11, 2024, filed in support of this motion.

1 failure to specify where and how the accused PAN products included the “parser rules” and
2 “analyzer rules” claims in the ’408 Patent, or the “file cache” and “security profile cache”
3 claimed in the ’731 Patents. (*Id.* at 9-10 (listing exemplary deficiencies).) On July 20, 2021,
4 Judge Hamilton granted PAN’s motion to strike in part, ordering Finjan to identify “*where and*
5 *how* each of the claim limitations” can be found in the accused products for each of the asserted
6 patents. (Dkt. No. 146 at 3-4 (emphasis added).) Judge Hamilton ordered Finjan to amend its
7 contentions for all asserted patents. (*Id.* (“[T]he court gives Finjan 30 days to serve amended
8 contentions in compliance with this order.”).)

9 *Round Two:* Thirty days later, Finjan served amended contentions *for just one of the four*
10 *asserted patents*, the ’154 Patent. (Ex. 3.) Finjan did not serve amended contentions for, *inter*
11 *alia*, the ’408 and ’731 Patents. (Ex. 4 at 1, 6.) Accordingly, Finjan did nothing to clarify where
12 and how the accused PAN products included the claimed “parser rules,” “analyzer rules,” “file
13 cache,” and “security profile cache.” (*See id.*) Instead, Finjan took the position that Judge
14 Hamilton ordered Finjan to amend only as to two limitations of the ’154 Patent. (*Id.* at 5.) On
15 September 16, 2021, PAN filed a motion to strike Finjan’s amended infringement contentions for
16 the ’154 Patent and to confirm that Finjan had no operative infringement contentions for the ’408
17 and ’731 Patents. (Dkt. No. 161.) PAN once again identified, *inter alia*, Finjan’s failure to
18 specify where and how the accused PAN products included the “parser rules,” “analyzer rules,”
19 “file cache,” and “security profile cache.” (*Id.* at 13-14.) Judge Donato found that Judge
20 Hamilton’s Order was not limited to only two limitations of the ’154 Patent and ordered Finjan to
21 serve amended infringement contentions for all patents — including the ’408 and ’731 Patents:

22 Finjan may amend its infringement contentions by January 28, 2022, to include
23 contentions for the ’154, ’633, ’408, and ’731 patents that are responsive to the
24 order partially granting the motion to strike infringement contentions, Dkt.
25 No. 146, which was not limited to the ’154 patent.

26 (Dkt. No. 177.)

27 *Round Three:* Finjan served its Second Amended Contentions on January 28, 2022 (Ex. 5)
28 but yet again failed to identify *where and how* certain claim limitations can be found in the

1 accused products. For example, Finjan added text that referred to various aspects of PAN's
 2 products, a laundry list of source code references, and references to various databases. (*See, e.g.*,
 3 Ex. 9 at 109-110, 123-126; Ex. 14 at 104-105, 117.) But Finjan did not clarify where and how,
 4 *inter alia*, the accused PAN products included the claimed "parser rules," "analyzer rules," "file
 5 cache," and "security profile cache."

6 On October 11, 2022, PAN moved to strike Finjan's Second Amended Contentions as to
 7 the '154, '408, and '731 Patents. (Dkt. No. 195-3.) Judge Donato terminated PAN's motion on
 8 March 27, 2023, determining that "claim construction may simplify or eliminate many of the
 9 issues raised" (internal quotations omitted), and held that "PAN may renew its motion after claim
 10 construction, as developments warrant." (Dkt. No. 232.)

11 *Claim Construction:* Claim construction has narrowed, but not resolved, the issues posed
 12 by Finjan's deficient infringement contentions. After the Court's claim construction order, Finjan
 13 stipulated to non-infringement of the '154 Patent (Dkt. Nos. 290, 292), rendering moot the
 14 inadequacy of Finjan's contentions for that patent. But Finjan's contentions for the '408 and '731
 15 Patents remain deficient. On September 5, 2024, the parties held a meet and confer regarding
 16 Finjan's Second Amended Contentions and the instant motion. (Ex. 6.) The parties reached an
 17 impasse, and PAN, consistent with Judge Donato's Order, is now renewing its motion to strike
 18 Finjan's Second Amended Contentions as to the '408 and '731 Patents, and to dismiss with
 19 prejudice Finjan's claims as to those patents.

20 **LEGAL STANDARD**

21 "[T]he purpose of infringement contentions under the patent local rules is not simply to
 22 put the defendant on notice, it is to require the plaintiff 'to crystallize its theories of the case early
 23 in the litigation and to adhere to those theories once disclosed.'" *Finjan, Inc. v. Check Point*
 24 *Software Techs., Inc.*, No. 18-CV-02621-WHO, 2019 WL 7801443, at *8 (N.D. Cal. Aug. 12,
 25 2019) (citation omitted). The purpose of Finjan's infringement contentions is to ensure that
 26 Finjan crystalizes its infringement theories and to avoid a "shifting sands" approach to the
 27 litigation. *See Polaris PowerLED Techs., LLC v. VIZIO, Inc.*, No. SACV 18-1571 JVS (DFMx),
 28 2020 WL 4258663, at *2 (C.D. Cal. May 14, 2020) ("These [Northern District of California]

1 rules are designed specifically to require parties to crystallize their theories of the case early in the
 2 litigation so as to prevent the shifting sands approach to claim construction, or a shifting sands
 3 approach to litigation in general”) (citation and internal quotations omitted).

4 Courts may strike with prejudice amended infringement contentions when a patentee
 5 repeatedly fails to comply with Patent Local Rules and earlier orders. *See, e.g., Finjan, Inc. v.*
 6 *Check Point Software Techs., Inc.*, No. 18-CV-02621-WHO, 2020 WL 597630, at *18-20 (N.D.
 7 Cal. Jan. 17, 2020) (striking Finjan’s second amended contentions with prejudice after repeated
 8 failure to comply with Patent Local Rules); *Huang v. Nephos Inc.*, No. C 18-06654 WHA, 2019
 9 WL 5892988, at *5 (N.D. Cal. Nov. 12, 2019), *aff’d sub nom., Huang v. MediaTek USA, Inc.*, 815
 10 F. App’x 521 (Fed. Cir. 2020) (granting motion to strike amended infringement contentions and
 11 dismissing case with prejudice “[a]fter multiple wasted chances” and “despite repeated guidance
 12 from the Court”).

13 ARGUMENT

14 Finjan’s Second Amended Contentions remain deficient for reasons that PAN identified in
 15 its previous motions to strike. (*See* Dkt. No. 128, 161, 195-3.) In fact, Finjan’s Second Amended
 16 Contentions remain largely the same as its initial contentions, which Judge Hamilton struck on
 17 July 20, 2021, finding that Finjan failed to identify “*where and how* each of the claim limitations
 18 . . . can be found in the accused products.” (Dkt. No. 146 at 3-4 (emphasis added).) Since Judge
 19 Hamilton’s order, Finjan has mostly added high-level descriptions of the operation of PAN’s
 20 source code and products and additional screenshots. But these additions are mere window
 21 dressing and do nothing to cure Finjan’s underlying failure to articulate *where and how* PAN’s
 22 products meet claim limitations.

23 Finjan’s refusal to address these deficiencies is part of a long pattern of Finjan refusing to
 24 comply with Patent Local Rules in this district—which led to its infringement claims being
 25 dismissed with prejudice or without leave to amend. *Finjan, Inc. v. Check Point Software Techs.,*
 26 *Inc.*, No. 18-CV-02621-WHO, 2020 WL 597630, at *21 (N.D. Cal. Feb. 27, 2019) (striking with
 27 prejudice sections of Finjan’s deficient infringement contentions); *Finjan, Inc. v. Proofpoint, Inc.*,
 28 No. No. 13–cv–05808–HSG, 2015 WL 1517920, at *12 (N.D. Cal. Apr. 2, 2015) (“[t]he Court

will not provide Finjan leave to amend the portions of its contentions expressly stricken, above.”) The result here should be no different. Because Finjan has refused to ever crystallize its theories, the Court should strike Finjan’s contentions and dismiss its claims for infringement of the ’408 and ’731 Patents with prejudice.

I. FINJAN’S SECOND AMENDED CONTENTIONS FOR THE ’408 PATENT ARE DEFICIENT AND SHOULD BE STRICKEN

The ’408 Patent is directed to scanning incoming program code using an analysis tailored to the specific programming language of the incoming code. This is accomplished using programming-language specific scanners that include programming-language parser and analyzer rules. (Ex. 7 at 8:29-37.) Claim 1, for example, requires:

instantiating, by the computer, *a scanner* for the specific programming language, in response to said determining, the scanner comprising *parser rules and analyzer rules* for the specific programming language, wherein the parser rules define certain patterns in terms of tokens, tokens being lexical constructs for the specific programming language, and wherein the analyzer rules identify certain combinations of tokens and patterns as being indicators of potential exploits, exploits being portions of program code that are malicious[]

(*Id.* Claim 1 (emphasis added).) Finjan’s Second Amended Contentions for the ’408 Patent are deficient in several respects, but perhaps most egregious is Finjan’s continuing failure to specifically identify *where* the “parser rules” and “analyzer rules” in the claims are satisfied by the accused PAN products. PAN identified this deficiency in its motion to strike before Judge Hamilton, who struck Finjan’s contentions as to the ’408 Patent. (Dkt. No. 128 at 10; Dkt. No. 146.) In spite of this, and after Judge Donato instructed Finjan to comply with Judge Hamilton’s Order, Finjan still does not explain specifically where these “parser” and “analyzer” rules are and *how* those components (wherever they are) meet the requirements of the asserted claims.

Finjan’s failure to specifically identify the alleged “parser” and “analyzer” rules in the accused products is the very deficiency that the Patent Local Rules are meant to avoid. Finjan, at best, makes conclusory statements that some components in PAN’s products “*describe* parser and analyzer rules for the specific programming language.” (Ex. 8 at 125 (emphasis added).) But identifying components that purportedly “describe” the “parser rules” and “analyzer rules” is not

1 the same as identifying *where* the claimed “parser” and “analyzer” rules themselves are. Finjan
 2 also discusses the two limitations together with no differentiation despite them being distinct
 3 limitations with different functionalities. (*See, e.g., id.* at 113 (“These content scanning engines
 4 use parser rules and analyzer rules (e.g., SML file and DFA constructs) as part of content
 5 inspection process.”).)

6 Finjan also does not explain *how* any alleged “parser” or “analyzer” rules in the accused
 7 products, if at all, allegedly meet the requirements of the claim. Claim 1 lays out very specific
 8 requirements for each:

- 9 • “wherein the parser rules define certain patterns in terms of tokens, tokens
 10 being lexical constructs for the specific programming language”; and
- 11 • “wherein the analyzer rules identify certain combinations of tokens and
 12 patterns as being indicators of potential exploits, exploits being portions of
 program code that are malicious”.

13 (Ex. 7 Claim 1.) Finjan nowhere articulates any theory regarding how any alleged “parser rules”
 14 in any PAN product “define certain patterns in terms of tokens.” Finjan also nowhere articulates
 15 any theory regarding how any alleged “analyzer rules” in any PAN product “identify certain
 16 combinations of tokens and patterns as being indicators of potential exploits.” Instead, Finjan
 17 merely claims that “patterns” and “tokens” broadly can include any of “language keywords,
 18 values, names for variables or functions, operators, and punctuation characters.” (Ex. 8 at 109.)
 19 But, even if that were true, Finjan nowhere identifies any specific “language keywords, values,
 20 names for variables or functions, operators, and punctuation characters” that are defined by any
 21 specific “parser rules” or that are “indicators of potential exploits.” Indeed, Finjan’s amendments
 22 do nothing to resolve this ambiguity, instead providing only paragraphs that vaguely state that
 23 aspects of PAN’s products “describe parser and analyzer rules.” (*See, e.g., Ex. 9* at 109-110.)
 24 These amendments are insufficient. *Finjan, Inc. v. Check Point Software Techs., Inc.*, No. 18-
 25 CV-02621-WHO, 2019 WL 955000, at *6 (N.D. Cal. Feb. 27, 2019) (finding Finjan’s
 26 infringement contentions deficient because “[t]he marketing materials and screenshots Finjan
 27 cites only describe how the [accused products] work in a general sense and virtually ‘parrot’ the
 28 claim language, without tying it to any source code citations or specific information in those

1 screenshots that match the specific claim components.”) Finjan’s infringement theories thus
 2 remain a mystery.

3 Finally, as Judge Donato anticipated, the claim construction order does not moot the issue.
 4 The expert report of Dr. Paul Min, Finjan’s technical expert for the ’408 Patent, contains the very
 5 same lack of description of “parser rules” and “analyzer rules,” and in effect copied and pasted
 6 Finjan’s deficient contentions into his report. (Ex. 10 at 412:3-14 (Dr. Min agreeing that it is
 7 “probable, likely and high likely [sic] even” that portions of his report were copied from Finjan’s
 8 infringement contentions); *id.* at 416:1-4 (confirming portion of content from Finjan’s
 9 infringement contentions was copied verbatim into his expert report).) For example, Dr. Min’s
 10 expert report contains the same conclusory statement from Finjan’s infringement contentions that
 11 PAN’s products “describe parser and analyzer rules for the specific programming language.”
 12 (*Compare* Ex. 11 ¶ 353 *with* Ex. 8 at 108.) His report also repeats the statement from Finjan’s
 13 contentions that “[t]hese content scanning engines use parser rules and analyzer rules (e.g. SML
 14 files and DFA constructs and engine) as part of content inspection process.” (*Compare* Ex. 11
 15 ¶ 372 *with* Ex.8 at 113.) Dr. Min’s report also copies the portion of Finjan’s contentions which
 16 states that “patterns” and “tokens” broadly include “language keywords, values, names for
 17 variables or functions, operators, and punctuation characters.” (*Compare* Ex. 11 ¶ 378 *with* Ex. 8
 18 at 109.) In sum, the deficiencies in Finjan’s contentions have carried over to Finjan’s expert
 19 report on the ’408 Patent, which does nothing to clarify Finjan’s vague infringement theories.

20 In sum, Finjan’s contentions for the ’408 Patent fail to comply with Patent Local Rule 3-
 21 1(c) because Finjan does not identify specifically *where* in the accused PAN products the “parser
 22 rules” and “analyzer rules” are, let alone *how* each of those components satisfies the requirements
 23 (e.g., tokens, patterns) set forth in the asserted claims. Finjan has known of this very deficiency
 24 since at least May 12, 2021 (Ex. 1), and has now copied these unremedied deficiencies over into
 25 its expert report. Finjan’s Second Amended Contentions as to the ’408 Patent should be struck.
 26 *See Shared Memory Graphics LLC v. Apple, Inc.*, 812 F. Supp. 2d 1022, 1025 (N.D. Cal. 2010)
 27 (noting the patent local rules require Plaintiff to provide “reasonable notice” for how it “believes
 28 it has a reasonable chance of proving infringement.” (citation and internal quotation omitted)).

1 **II. FINJAN’S SECOND AMENDED CONTENTIONS FOR THE ’731 PATENT**
2 **ARE DEFICIENT AND SHOULD BE STRICKEN**

3 The ’731 Patent relates to scanning incoming files from the internet and deriving security
4 profiles from those files. Claim 1 recites, *inter alia*, the following elements:

5 a *file cache* for storing files that have been scanned by the scanner for future
6 access, wherein each of the stored files is indexed by a file identifier;

7 a *security profile cache* for storing the security profiles derived by the scanner,
8 wherein each of the security profiles is *indexed in the security profile cache* by a
9 file identifier *associated with a corresponding file stored in the file cache*; and

10 a *security policy cache* for storing security policies for intranet computers within
11 the intranet

12 (Ex. 12 Claim 1.) Accordingly, the asserted claims of the ’731 Patent require a “file cache,”
13 “security profile cache,” and “security policy cache.” But Finjan does not specifically identify
14 *where* in the PAN accused products each of these is, let alone *how* those components are the
15 recited caches. Finjan points to myriad databases in the accused PAN products and contends that
16 those products have each of the three respective caches, but Finjan does not state which specific
17 database is the alleged “file cache,” which specific database is the alleged “security profile
18 cache,” and which specific database is the alleged “security policy cache,” let alone explain how
19 those specific databases satisfy the limitations.

20 **File Cache:** Finjan contends that the “*file cache*” is “*e.g., a database, such as Local DB, or*
21 [] disk storage/memory.” (Ex. 13 at 104.) Thus, according to Finjan’s contentions, every
22 database and disk storage in PAN’s products might constitute a “file cache.” But Finjan nowhere
23 identifies any specific database or disk storage as the claimed “file cache,” let alone explain *how*
24 that database or disk storage is the claimed file cache. Moreover, Finjan never connects the
25 alleged “file cache” to the claimed “security profile cache.” The claim requires that the “security
26 profile cache” index security profiles by a “file identifier” associated with a corresponding file
27 stored in the “file cache.” But Finjan does not identify a specific alleged “file cache” and specific
28 “security profile cache,” which have a single “file identifier” connecting the two. By simply
29 pointing to hashes associated with one alleged “cache,” Finjan fails to identify an index that is
30 associated with a separate “cache.” (*See id.* at 104 (stating the existence of a file identifier, while

1 listing several possible file caches including “a database” or “disk storage/memory”); *id.* at 108-
 2 109 (identifying a hash in a WildFire Report without explaining how that hash is allegedly
 3 indexed in a specific “file cache” or “security profile cache”).) Although PAN had raised this
 4 issue in its May 12, 2021 correspondence and motion to strike before Judge Hamilton, Finjan’s
 5 amendments did not resolve the issue. For the “file cache” limitation, Finjan only provided a
 6 broad list of potential “file cache[s],” which include “disk storage/memory” and various databases
 7 (Ex. 14 at 104-105, 117), document citations that do not state what the claimed “file cache” is or
 8 how it is connected to any “security profile cache,” (*id.* at 106-107, 112-116), and pincites to
 9 source code that does not explain what the alleged “file cache” is or how it operates (*id.* at 118-
 10 121, 125).

11 **Security Profile Cache:** Finjan contends that alleged “security profiles” are “stored in a
 12 *security profile cache* (e.g., in a database, such as Local DB, Central DB, Virus Database, or in
 13 disk storage).” (Ex. 13 at 126 (emphasis added).) Again, according to Finjan’s contentions,
 14 every database and disk storage in PAN’s accused products could thus constitute the claimed
 15 “security profile cache.” And Finjan’s contentions become more confusing given that Finjan
 16 calls out overlapping databases (e.g., Local DB) as both a possible “file cache” and “security
 17 profile cache.” In addition, Finjan also fails to explain *how* any of these myriad conceivable
 18 “security profile caches” store security profiles derived by the scanner (which, according to the
 19 claim, must contain computer commands). Finjan’s examples at most show that PAN’s products
 20 have components that store analysis results, but the claim requires much more than that. (*Id.* at
 21 144.) Finjan’s amended contentions introduced its broad recitation of any databases or disk
 22 storage as the claimed “security profile cache” (Ex. 14 at 126-127) and added the point that Local
 23 DB allegedly “stores the scan results” (*id.* at 144). But these, and Finjan’s other revisions to its
 24 contentions, did not resolve the deficiencies in its initial infringement contentions.

25 **Security Policy Cache:** Finjan does not identify *where* the accused “security policy
 26 cache” is purportedly in PAN’s products. Finjan merely states that “[s]ecurity policies are stored”
 27 and that PAN’s NGFW product or Traps product “store[s] security policies,” without identifying
 28 the specific component that constitutes the alleged “security policy cache.” (*See, e.g.,* Ex. 13 at

1 161, 164, 167.) Finjan also never identifies the “*how*.” As the example below shows, Finjan
 2 merely parrots claim language and recites generic statements about PAN’s products that have no
 3 relevance to the claim language, thus providing PAN with no notice of Finjan’s infringement
 4 theory. (*Id.* at 168.)

5 As yet another example, PAN documentation explains that NGFWs store security policies in a cache and that
 6 each of the security policies include a list of restrictions for files that are transmitted to intranet computers.
 7 See, e.g., <https://knowledgebase.paloaltonetworks.com/KCSArticleDetail?id=kA10g000000CIWZCA0>
 8 (“Security policies on the firewall can be defined using various criteria such as zones, applications, IP
 addresses, ports, users, and HIP profiles. Firewall administrators can define security policies to allow or deny
 traffic, starting with the zone as a wide criterion, then fine-tuning policies with more granular options such as
 ports, applications, and HIP profiles.”)

9 Each of these deficiencies existed in Finjan’s initial, stricken, infringement contentions. (*See* Ex.
 10 14 at 161, 164, 167-168.)

11 Finally, the report from Dr. Jakobsson, Finjan’s expert for the ’731 Patent, does little to
 12 resolve this issue because his opinions are also non-specific and conclusory in several respects
 13 and, like Dr. Min, he largely cuts and pastes from Finjan’s scattershot and vague contentions.
 14 Dr. Jakobsson vaguely contends a “file cache” includes “e.g., a database, such as Local DB, or []
 15 disk storage/memory.” (*Compare* Ex. 15 ¶ 748 with Ex. 13 at 104.) Dr. Jakobsson also opines,
 16 the same as Finjan’s contentions, that “security profiles (e.g., scan results or analysis reports
 17 following a scan) are stored in a security profile cache (e.g., in a database, such as Local DB,
 18 Central DB, Virus Database, or in disk storage) after a scan ends.” (Ex. 15 ¶ 806.) Like Finjan’s
 19 contentions, he does not connect the “file cache,” “security profile cache,” and “file identifier”
 20 limitations to specific alleged caches, and points to a wide variety of databases without explaining
 21 how any given database is a “file cache” or “security profile cache.”

22 In sum, Finjan’s contentions for the ’731 Patent fail to comply with Patent Local Rule 3-
 23 1(c) because Finjan does not identify specifically *where* in the accused PAN products the “file
 24 cache,” “security profile cache,” and “security policy cache” are, let alone *how* each of those
 25 components is the specific cache recited in the claims. Finjan has known of this very deficiency
 26 as to the “file cache” and “security profile cache” since at least May 12, 2021 (Ex. 1), and has
 27 now copied these unremedied deficiencies over into its expert report. Finjan’s Second Amended
 28 Contentions as to the ’731 Patent should be struck. *See Shared Memory Graphics*, 812 F. Supp.

2d at 1025 (noting the patent local rules require Plaintiff to provide “reasonable notice” for how it “believes it has a reasonable chance of proving infringement.”)

III. THE COURT SHOULD STRIKE FINJAN’S SECOND AMENDED CONTENTIONS FOR THE ’408, AND ’731 PATENTS WITH PREJUDICE

The Court should strike Finjan’s Second Amended Contentions for the ’408 and ’731 Patents with prejudice. Finjan has already had three rounds of infringement contentions but still fails to identify *where* and *how* certain limitations exist in the accused PAN products. Finjan has known about the deficiencies with the “parser rules,” “analyzer rules,” “file cache,” and “security profile cache” limitations for more than three years. (Ex. 1.) And Finjan has refused to address them despite the fact that PAN raised the deficiencies in correspondence and in its motion before Judge Hamilton (Dkt. No. 128 at 9-10) and again in its motions before Judge Donato. (Dkt. No. 161 at 13-14; Dkt. No. 195-3 at 9-10, 11-14.) Judge Hamilton ordered Finjan to fix all deficiencies (Dkt. No. 141) and Judge Donato confirmed that Finjan was ordered to rectify *all* deficiencies. (Dkt. No. 177.)

Finjan either cannot or will not comply with the Patent Local Rules. Its continued failure to articulate any cogent infringement theory has prejudiced PAN’s ability to prepare its defense for the scheduled June 9, 2025, trial. Because Finjan steadfastly refuses to serve contentions that comply with Patent Local Rule 3-1, Judge Hamilton’s Order, and Judge Donato’s Order, the Court should not give Finjan another chance to serve amended contentions. *See Finjan, Inc. v. Proofpoint, Inc.*, No. 13-cv-05808-HSG, 2015 WL 1517920, at *12 (ND. Cal. Apr. 2, 2015) (“The Court will not provide Finjan leave to amend the portions of its contentions expressly stricken, above.”); *Blue Spike, LLC v. Adobe Sys., Inc.*, No. 14-cv-01647-YGR (JSC), 2015 WL 335842 at *6 (N.D. Cal. Jan. 26, 2015) (striking contentions given plaintiff’s “failure to take any action” despite defendants “having raised this defect in informal communications, a discovery letter to the Court, and a formally noticed motion”).

Good cause exists in this case to dismiss Finjan’s infringement claims for the ’408 and ’731 Patents with prejudice. *Huang v. Nephos*, 2019 WL 5892988, at *4-5 (striking infringement contentions upon showing of “good cause”). Finjan has had multiple opportunities and years

(since 2014) to prepare and serve compliant infringement contentions. It has failed to do so, despite detailed explanations of deficiencies from PAN and directives from two judges in this District. Accordingly, Finjan’s claims that PAN infringes the ’408 and ’731 Patents should be dismissed with prejudice. *See MasterObjects, Inc. v. Amazon.com*, No. C 20-08103-WHA, 2022 WL 4280640, at *9 (N.D. Cal. Sept. 15, 2022) (granting summary judgment of non-infringement and holding based on construction of “cache” term that “the time has also long passed for MasterObjects to revise its infringement contentions to capture this order’s construction, which adopts Amazon’s proposal”); *Shared Memory Graphics, LLC v. Apple Inc.*, No. C 10-2475 MMC, 2011 WL 5320749, at *3-4 (N.D. Cal. Nov. 2, 2011) (finding the magistrate judge’s order granting motion to strike certain parts of the second amended infringement contentions in essence dispositive); *Huang v. Nephos*, 2019 WL 5892988, at *5 (granting motion to strike amended infringement contentions and dismissing case with prejudice “[a]fter multiple wasted chances” and “despite repeated guidance from the Court.”)

CONCLUSION

For the foregoing reasons, the Court should strike Finjan’s Amended Contentions for the ’408 and ’731 Patents with prejudice and dismiss Finjan’s claims of infringement of these patents with prejudice.

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